

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

SIMON OLSTEIN, M.D.

Holder of License No. 8589
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-04-0480A

**CONSENT AGREEMENT FOR LETTER
OF REPRIMAND AND PROBATION**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Simon Olstein, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent acknowledges that he has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement.") Respondent acknowledges that he understands he has the right to consult with legal counsel regarding this matter and has done so or chooses not to do so.

2. Respondent understands that by entering into this Consent Agreement he voluntarily relinquishes any rights to a hearing or judicial review in State or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. Respondent acknowledges and understands that this Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government

1 regulatory agency proceeding, civil or criminal court proceeding, in this State or any other
2 state or federal court.

3 5. Respondent acknowledges and agrees that, although the Consent
4 Agreement has not yet been accepted by the Board and issued by the Executive Director,
5 Respondent may not revoke his acceptance of the Consent Agreement. Respondent may
6 not make any modifications to the document. Any modifications to this original document
7 are ineffective and void unless mutually approved by the parties.

8 6. Respondent further understands that this Consent Agreement and Order,
9 once approved and signed is a public record that may be publicly disseminated as a
10 formal action of the Board and will be reported to the National Practitioner's Data Bank
11 and will be reported to the Arizona Medical Board's website.

12 7. If any part of the Consent Agreement is later declared void or otherwise
13 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in
14 force and effect.

15 
16 SIMON OLSTEIN, M.D.

Date

6/16/05

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 8589 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-04-0480A after receiving a report from the Phoenix Police Department that on April 15, 2004 Respondent was arrested at Phoenix Sky Harbor Airport after marijuana and black tar heroine (in a balloon) were found in his luggage.

4. Respondent admitted ownership of the luggage that contained the narcotics. Respondent also admitted to the possession of marijuana, but stated that he believed the drug found inside a balloon was cocaine, not heroine.

5. Respondent admitted to using cocaine in the past and confirmed that he currently smokes marijuana once or twice per week. Respondent also stated that he drinks a beer or two every couple of nights, including when he is on call.

6. On April 27, 2004 Respondent voluntarily presented at an inpatient treatment center for evaluation for chemical dependency. At the conclusion of the evaluation, inpatient treatment was recommended. Respondent voluntarily elected to remain at the inpatient treatment facility and was successfully discharged on June 4, 2004.

7. Respondent was formally charged with possession of narcotic drugs, a Class 4 felony, and possession or use of marijuana, a Class 6 felony.

8. On August 8, 2004 Respondent was deferred from prosecution upon participation in the Maricopa County Treatment Assessment Screening Center ("TASC") Drug Diversion Program.

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(a)("[v]iolating any federal or state laws, rules or regulations applicable to the practice of medicine".)

4. The conduct and circumstances above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(g)("[u]sing controlled substances except if prescribed by another physician for use during a prescribed course of treatment.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that:

1. Respondent is issued a Letter of Reprimand for the conduct described above.

2. Respondent placed on Probation for five years with the following terms and conditions:

a. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before September 15, 2005.

1 b. Respondent shall participate in the Board's Monitored Aftercare Program
2 pursuant to the following:

3 1. **Participation.** Respondent shall promptly enroll in and participate in the
4 Monitored Aftercare Program ("MAP") for the treatment and rehabilitation of physicians.
5 Respondent shall remain in MAP for five years from the effective date of this Order.
6 Respondent's participation in MAP may be unilaterally terminated with or without cause at
7 the Board's discretion at any time after the issuance of this Order.

8 2. **Group Therapy.** Respondent shall attend MAP's group therapy sessions
9 one time per week for the duration of this Order, unless excused by the MAP group
10 therapist for good cause such as illness or vacation. Respondent shall instruct the MAP
11 group therapist to release to the Board, upon its request, all records relating to
12 Respondent's treatment, and to submit monthly reports to the Board regarding attendance
13 and progress. The reports shall be submitted on or before the 10th day of each month.

14 3. **12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-
15 step meetings or other self-help group meetings as approved by the MAP Director for a
16 period of ninety days beginning not later than either (a) the first day following
17 Respondent's discharge from the evaluation or (b) the date of this Order.

18 4. Following completion of the ninety meetings in ninety days, Respondent shall
19 participate in a 12-step recovery program or other self-help program as recommended by
20 the MAP group therapist and approved by the MAP Director. Respondent shall attend a
21 minimum of three 12-step or other self-help program meetings per week.

22 5. **Board-Approved Primary Care Physician.** Respondent shall promptly
23 obtain a primary care physician and shall submit the name of the physician to Board Staff
24 in writing for approval. The Board-approved primary care physician ("PCP") shall be in
25 charge of providing and coordinating Respondent's medical care and treatment. Except in

1 an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP
2 and from health care providers to whom the PCP refers Respondent from time to time.
3 Respondent shall request that the PCP document all referrals in the medical record.
4 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and
5 provide a copy of this Order to that physician. Respondent shall also inform all other
6 health care providers who provide medical care or treatment that Respondent is
7 participating in the Board's rehabilitation program:

8 6. **Medication.** Except in an *Emergency*, Respondent shall take no *Medication*
9 unless the PCP or other health care provider to whom the PCP makes a referral
10 *prescribes the Medication*. Respondent shall not self-prescribe any *Medication*.

11 7. If a controlled substance is prescribed, dispensed, or is administered to
12 Respondent by any person other than PCP, Respondent shall notify the PCP in writing
13 within 48 hours. The notification shall contain all information required for the medication
14 log entry specified in paragraph 8. Respondent shall request that the notification be made
15 a part of the medical record. This paragraph does not authorize Respondent to take any
16 *Medication* other than in accordance with paragraph 6.

17 8. **Medication Log.** Respondent shall maintain a current legible log of all
18 *Medication* taken by or administered to Respondent, and shall make the log available to
19 the Board and its Staff upon request. For *Medication* (other than controlled substances)
20 taken on an on-going basis, Respondent may comply with this paragraph by logging the
21 first and last administration of the *Medication* and all changes in dosage or frequency. The
22 log, at a minimum, shall include the following:

- 23 a. Name and dosage of *Medication* taken or administered;
24 b. Date taken or administered;
25 c. Name of prescribing or administering physician;

1 d. Reason *Medication* was prescribed or administered.

2 This paragraph does not authorize Respondent to take any *Medication* other than in
3 accordance with paragraph 6.

4 9. **No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or
5 any food or other substance containing poppy seeds or alcohol.

6 10. **Biological Fluid Collection.** During all times that Respondent is physically
7 present in the State of Arizona and such other times as Board Staff may direct,
8 Respondent shall promptly comply with requests from Board Staff, the MAP group
9 therapist, or the MAP Director to submit to witnessed biological fluid collection. If
10 Respondent is directed to contact an automated telephone message system to determine
11 when to provide a specimen, Respondent shall do so within the hours specified by Board
12 Staff. For the purposes of this paragraph, in the case of an in-person request, "promptly
13 comply" means "immediately". In the case of a telephonic request, "promptly comply"
14 means that, except for good cause shown, Respondent shall appear and submit to
15 specimen collection not later than two hours after telephonic notice to appear is given.
16 The Board in its sole discretion shall determine good cause.

17 11. Respondent shall provide Board Staff in writing with one telephone number
18 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis
19 to submit to biological fluid collection. For the purposes of this section, telephonic notice
20 shall be deemed given at the time a message to appear is left at the contact telephone
21 number provided by Respondent. Respondent authorizes any person or organization
22 conducting tests on the collected samples to provide testing results to the Board and the
23 MAP director.

24 12. Respondent shall cooperate with collection site personnel regarding
25 biological fluid collection. Repeated complaints from collection site personnel regarding

1 Respondent's lack of cooperation regarding collection may be grounds for termination
2 from the program.

3 **13. Payment for Services.** Respondent shall pay for all costs, including
4 personnel and contractor costs, associated with participating in the Monitored Aftercare
5 Program at time service is rendered, or within 30 days of each invoice sent to Respondent.

6 **14. Examination.** Respondent shall submit to mental, physical, and medical
7 competency examinations at such times and under such conditions as directed by the
8 Board to assist the Board in monitoring Respondent's ability to safely perform as a
9 physician and Respondent's compliance with the terms of this Order.

10 **15. Treatment.** Respondent shall submit to all medical, substance abuse, and
11 mental health care and treatment ordered by the Board, or recommended by the MAP
12 Director.

13 **16. Obey All Laws.** Respondent shall obey all federal, state and local laws, and
14 all rules governing the practice of medicine in the State of Arizona.

15 **17. Interviews.** Respondent shall appear in person before the Board and its
16 Staff and committees for interviews upon request, upon reasonable notice.

17 **18. Address and Phone Changes, Notice.** Respondent shall immediately
18 notify the Board in writing of any change in office or home addresses and telephone
19 numbers. Respondent shall provide Board Staff at least three business days advance
20 written notice of any plans to be away from office or home when such absence would
21 prohibit Respondent from responding to an order to provide a biological fluid specimen or
22 to communications from the Board. The notice shall state the reason for the intended
23 absence from home or office, and shall provide a telephone number that may be used to
24 contact Respondent.

25 **19. Relapse, Violation.** In the case of Respondent's use of drugs or alcohol in

1 violation of the Order, Respondent shall promptly enter into an Interim Consent Agreement
2 that requires, among other things, that Respondent not practice medicine until such time
3 as Respondent successfully completes an inpatient or residential treatment program for
4 substance abuse designated by the Board or Staff and obtains affirmative approval to
5 return to the practice of medicine. Prior to approving Respondent's request to return to the
6 practice of medicine, Respondent may be required to submit to witnessed biological fluid
7 collection, undergo any combination of physical examination, psychiatric or psychological
8 evaluation and/or successfully pass the special purpose licensing examination or the
9 Board may conduct interviews for the purpose of assisting it in determining Respondent's
10 ability to safely return to the practice of medicine. **In no respect shall the terms of this**
11 **paragraph restrict the Board's authority to initiate and take disciplinary action for**
12 **violation of this Order.**

13 **20. Notice Requirements.**

14 **(A)** Respondent shall immediately provide a copy of this Order to all employers and
15 all hospitals and free standing surgery centers at which Respondent currently has
16 privileges. Within 30 days of the date of this Order, Respondent shall provide the Board
17 with a signed statement of compliance with this notification requirement. Upon any
18 change in employer or upon the granting of privileges at additional hospitals and free
19 standing surgery centers, Respondent shall provide the employer, hospital or free standing
20 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
21 the granting of privileges at additional hospitals and free standing surgery centers,
22 Respondent shall provide the Board with a signed statement of compliance with this
23 notification requirement.

24 **(B)** Respondent is further required to notify, in writing, all employers, hospitals and
25 free standing surgery centers at which Respondent currently has or in the future gains

1 employment or privileges, of use of drugs or alcohol in violation of this Order and/or entry
2 into a treatment program. Within seven days of any of these events Respondent shall
3 provide the Board written confirmation of compliance with this notification requirement.

4 (C) Respondent shall immediately submit to the Board under penalty of perjury, on
5 a form provided by the Board, the name(s) and address(es) of all employers and all
6 hospitals and free standing surgery centers at which Respondent currently holds privileges
7 to practice. Respondent is further required to, under penalty of perjury, on a form provided
8 by the Board, immediately notify the Board of any changes in employment and of any
9 hospitals and free standing surgery centers at which Respondent gains privileges after the
10 effective date of this Order.

11 21. Public Record. This Order is a public record.

12 22. Out-of State. In the event Respondent resides or practices as a physician in
13 a state other than Arizona, Respondent shall participate in the rehabilitation program
14 sponsored by that state's medical licensing authority or medical society. Respondent shall
15 cause the other state's program to provide written reports to the Board regarding
16 Respondent's attendance, participation, and monitoring. The reports shall be due on or
17 before the 15th day of March and September of each year, until the Board terminates this
18 requirement in writing.

19 23. Respondent shall immediately obtain a treating psychiatrist approved by
20 Board Staff and shall remain in treatment with the psychiatrist for a minimum of 12
21 months. Respondent shall comply with the psychiatrist's recommendations for continuing
22 care and treatment. Respondent shall instruct the psychiatrist to submit quarterly written
23 reports to the Board regarding diagnosis, prognosis, and recommendations for continuing
24 care and treatment. The reports must be submitted on or before the 15th day of March,
25 June, September and December of each year. Respondent shall pay the expenses of

1 psychiatric care and is responsible for paying for the preparation of the quarterly reports.
2 After 12 months Respondent may submit a written request to the Executive Director
3 requesting that the Board terminate the requirement that Respondent remain in treatment
4 with a psychiatrist. The decision to terminate will be based in part upon the treating
5 psychiatrist's recommendation for continued care and treatment.

6 24. This Order supersedes all previous consent agreements and stipulations
7 between the Board and Respondent.

8 25. The Board retains jurisdiction and may initiate new action based upon any
9 violation of this Order.

10 DEFINITIONS

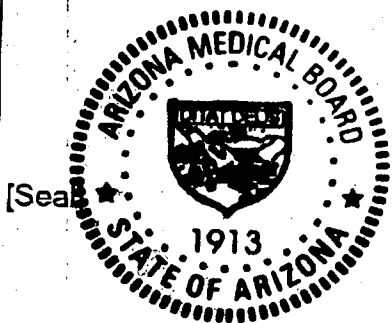
11 "Medication" means "prescription-only drug, controlled substance, and over-the
12 counter preparation, other than plain aspirin and plain acetaminophen."

13 "Emergency" means "a serious accident or sudden illness that, if not treated
14 immediately, may result in a long-term medical problem or loss of life."

15 This Order is the final disposition of case number MD-04-0480A.

16 DATED this 20 day of JUNE, 2005.

17 ARIZONA MEDICAL BOARD



21 By 
22 TIMOTHY C. MILLER, J.D.
23 Executive Director

24 ORIGINAL of the foregoing filed this
25 21st day of JUNE, 2005 with:

1 The Arizona Medical Board
2 9545 East Doubletree Ranch Road
3 Scottsdale, Arizona 85258

4 Executed copy of the foregoing
5 mailed this

6 21st day of June, 2005, to:

7 Mr. Robert J. Milligan
8 Gallagher & Kennedy, P.A.
9 2575 E Camelback Road
10 Phoenix, AZ 85016-4240

11 Executed copy of the foregoing
12 mailed this

13 21st day of June, 2005, to:

14 Simon Olstein, M.D.
15 Address of Record.

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18 Quality Assurance
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